

**Presentment Date and Time:**  
**Disputes Hearing**  
**February 16, 2001, at 10:00 a.m.**

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UNITED STATE BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
RANDALL'S ISLAND FAMILY GOLF	:	Case Nos. 00-B-41065 through 00-B-
CENTER, INC., et al.,	:	41196 (SMB)
	:	
Debtors.	:	Jointly Administered

**OBJECTION OF MICHAEL AND JUANITA KOHECK**  
**TO ASSUMPTION AND ASSIGNMENT OF LEASE FOR SITE No. 217**

TO: THE HONORABLE STUART M. BERNSTEIN,  
UNITED STATES BANKRUPTCY JUDGE:

Michael and Juanita Kocheck (the "Kochecks"), by and through counsel, hereby  
object to the Assumption of Assignment of the Lease for Site No. 217, pursuant to Section  
365(b)(1) of the Bankruptcy Code.

**BACKGROUND**

**A. Procedural History**

1. On May 4, 2000 (the "Petition Date"), each of the 132 Debtors filed a  
voluntary petition under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy  
Code").

2. Pursuant to the Court's Order, the Debtors' cases are being administered jointly. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. This Court has jurisdiction over this case and the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

**B. The Lease with the Kochecks**

4. Pursuant to a written lease agreement (the "Lease"), the Kochecks are the landlords of Cincinnati Family Golf Centers, Inc. ("CFGC")(one of the Debtors), with respect to certain non-residential real property located at 6400 Dixie Highway, in Fairfield, Ohio (the "Premises").

5. On the Premises, CFGC operated a golf and recreational facility (the "Facility"), including a golf driving and instructional range, a golf pro shop, a miniature golf course, and baseball batting cages.

6. CFGC's sole business was the operation of the Facility.

7. The rent due to the Kochecks is not a flat monthly fee. Rather, pursuant to the terms of the Lease, the rent due to the Kochecks is based upon the financial performance of the operations at the Facility. Specifically, Section 4.1 of the Lease provides that the Lessee must pay a monthly rental equal to:

(i) fifteen (15%) percent of the gross income collected by the Lessee from the operation of the Leased Premises by Lessee, except for the operation of the pro shop; (ii) thirty-five (35%) percent of any rental collected by Lessee on the sublease of any part of the Leased Premises; and (iii) seven and one-half (7 ½%) percent of the gross income from the operation of the pro shop by Lessee (if Lessee subleases the pro shop operation, rental would be determined under subparagraph (ii) set forth above).

**C. Sale of Debtor's Leasehold Interest**

8. On January 23, 2000, the Court entered an Order (the "Order") which, *inter alia*, authorized and scheduled an Auction for the sale of Debtors' assets and approved specific Bidding Procedures.

9. Pursuant to the Order and the Bidding Procedures, all parties interested in bidding on a particular asset of the Debtors were to submit all required Bid Documents by February 5, 2001. For those wishing to purchase the Debtors' interest in leaseholds, the requisite Bid Documents were to include a demonstration that Bidders for leased property had the ability to fulfill their obligations under the lease, including an ability to provide adequate assurance of future performance.

10. On February 9, 2001, the Debtor conducted an Auction of its assets, including the sale of CFGC's leasehold interest in the Premises. At the Auction, KLAK Golf LP ("KLAK") placed the highest bid for CFGC's leasehold interest in the Premises.

11. Pursuant to the Order, within 48 hours of the completion of the Auction, the Debtor was to provide the Kochecks with relevant financial information for KLAK, the Successful Bidder, in order for the Kochecks to assess KLAK as the new lessee of the Premises.

12. Despite the mandates of the Order, Debtor failed to provide any information to the Kochecks within 48 hours. The reason for Debtors' failure to provide this information is that the Debtors never obtained such information from KLAK as part of its Bid Documents. KLAK did not provide this information to the Debtors until late in the afternoon on Monday, February 12, 2001 (nearly 72 hours after the conclusion of the auction). The Debtors did not provide any information on KLAK to the Kochecks or their counsel until Tuesday afternoon, February 13, 2001.

**D. The Successful Bidder - KLAK Golf LP**

13. As noted above, the Successful Bidder at the Auction for the Premises was KLAK.

14. KLAK is a limited partnership comprised of KemperSports Management, Inc. ("Kemper"); Lubert-Adler Real Estate Funds ("Lubert-Adler"); and Klaff Realty LP ("Klaff").

15. KLAK has represented that it was formed only in July 2000 and has been in operation since October 2000. Thus, KLAK is a single-purpose entity with no track record.

16. KLAK has represented that it owns and operates, *inter alia*, 16 driving ranges and 9 miniature golf courses.

**E. Adequate Assurance Information**

17. In the afternoon of Tuesday, February 13, 2001, the Debtors finally provided the Kochecks with certain adequate assurance information (the "First Set of Information") that had been provided to them on behalf of KLAK, the Successful Bidder.

18. **The First Set of Information contained no financial or other relevant information on KLAK, the Successful Bidder.** Instead, the First Set of Information consisted entirely of financial information on Lubert-Adler Real Estate Parallel Fund II, L.P., an entity apparently related to Lubert-Adler.

19. In an effort to obtain adequate assurance information on KLAK (the Successful Bidder), counsel for the Kochecks made repeated attempts to contact Steve Greenbaum, of KLAK.

20. Counsel for the Kochecks finally were able to contact Mr. Greenbaum late in the afternoon of Tuesday, February 13, 2001. Up to this time, the only information that had been provided to the Kochecks was the First Set of Information which, as noted above, contained no financial or relevant information on KLAK.

21. During the conversation between the Kocheck's counsel and Mr. Greenbaum, Mr. Greenbaum indicated that he would provide financials on KLAK and information on KLAK's capitalization, and that he would transmit this information via next day delivery.

22. Also during the conversation between the Kocheck's counsel and Mr. Greenbaum, counsel for the Kochecks requested financial information on KLAK's current

operations, specifically, the 16 driving ranges and 9 miniature golf courses. Mr. Greenbaum indicated that he would not provide such information. Mr. Greenbaum acknowledged, though, that these operations were being operated at a loss.

23. During a subsequent conversation, Mr. Greenbaum acknowledged that in fact the assignee for the Lease would likely be a sole purpose entity and not KLAKE itself and that no balance sheet or financial information would be provided with respect to the sole purpose entity.

24. On Wednesday, February 14, 2001, counsel for the Kochecks received the additional information from Mr. Greenbaum (the "Second Set of Information").

25. **The only financial information about KLAKE that was provided in the Second Set of Information was a two-page, unaudited balance sheet that indicated a net equity of \$7.8 million. No cash flow statement or other financial information on KLAKE's current operations were provided.** Absolutely no information was provided about the actual entity who is the proposed assignee under the Lease. Also within the Second Set of Information were the names and telephone numbers of 3 landlords of existing KLAKE facilities; a general and generic statement of KLAKE's overall strategy; and corporate profiles for Kemper, Lubert-Adler, and Klaff".

#### **THE KOHECKS' OBJECTION TO THE MOTION**

26. As the party seeking to assume and assign the Lease, the Debtor bears the burden to demonstrate adequate assurance of future performance. In re Texas Health Enter., Inc., 246 B.R. 832, 835 (Bankr. E.D. Tex. 2000).

27. Congressional intent in requiring adequate assurance of future performance includes ensuring that "the contracting parties receive the full benefit of their bargain if they are forced to continue performance." In re Ionosphere Clubs, Inc., 85 F.3d 992, 999 (2d Cir. 1996) (citation omitted). The primary focus is on the assignee's ability to fulfill the financial obligations under the lease. In re Martin Paint Stores, 199 B.R. 258, 263 (Bankr. S.D.N.Y. 1996).

28. In testing whether adequate assurance has been established, "courts look for evidence of profitability . . . ." In re Embers 86th Street, Inc., 184 B.R. 892, 902 (Bankr. S.D.N.Y. 1995).

29. The Debtor and KLAK, as the Successful Bidder, have failed to demonstrate any adequate assurance of future performance. **The only financial information provided on KLAK was the two-page, unaudited balance sheet.** No financial information was provided regarding the proposed assignee.

30. KLAK has acknowledged that its present operations at the 16 driving ranges and 9 miniature golf courses are not profitable.

31. In a feeble attempt to demonstrate adequate assurance of future performance, the Debtor and KLAK appear to rely upon the financials and reputations of Kemper, Lubert-Adler, and Klaff. But, Kemper was not the Successful Bidder; Lubert-Adler was not the Successful Bidder; and Klaff was not the Successful Bidder. KLAK was the Successful Bidder. Yet, there is a noticeable lack of adequate assurance information provided regarding KLAK and absolutely no adequate assurance information provided regarding the proposed assignee..

32. As part of the Second Set of Information, KLAK did provide a general and generic statement of its overall strategy. Such a broad plan is inadequate with respect to the Lease with the Kochecks. KLAK has not provided any site-specific assessment, plan or projected profit and loss statement. The Debtor's and KLAK's obligation to demonstrate adequate assurance must address the specific operations at the Premises. A general statement of operations does not address the Lease which KLAK is seeking to assume through a proposed entity about which the Kochecks have no information.

33. KLAK's ability and plans with respect to the operations of the Facility are critical. As noted above, the rental payments under the Lease are based upon a percentage of the income collected. Rent is not a flat monthly fee. Thus, a viable and profitable operation of the Facility is critical if the Kochecks are to receive the full benefit of their bargain. The Debtor and

KLAK have failed to present any plan that specifically addresses how it will operate the Facility and ensure a viable stream of income is being generated.

34. As the Debtor has failed meet its burden of demonstrating adequate assurance of future performance by KLAK under the Lease, the Court should deny the assumption and assignment of the Lease. The Court should enter an order rejecting the Lease.

Dated: February 14, 2001

Respectfully submitted,

**TAFT, STETTINIUS & HOLLISTER LLP**

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By: /s/ Cathy R. Hershcopf

UNITED STATE BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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CENTER, INC., et al.,	:	Case Nos. 00-B-41065 through 00-B-
	:	41196 (SMB)
Debtors.	:	Jointly Administered

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the Objection of Michael And Juanita Kocheck  
To Assumption And Assignment of Lease For Site No. 217 was sent by facsimile to the parties listed  
below on February 15, 2001:

Jonathan L. Flaxer of Golenbock, Eiseman, Assor & Bell to facsimile number 212-754-0777

Edward S. Weisfelner of Berlack, Israels & Liberman LLP to facsimile number 212-704-0196

Richard S. Toder of Morgan, Lewis & Bockius to facsimile number 212-309-6273

Brian Shoichi Masumoto of the Office of the U.S. Trustee to facimile number 212-668-2255

Richard A. Chesley of Jones, Day, Reavis & Pogue to facimile number 312-782-6585

Steven M. Greenbaum of Klaff Realty, LP to facimile number 312-360-0606

Dated: New York, New York  
February 15, 2001

/s/ Theresa K. Hammond  
Theresa K. Hammond